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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANTON OGUZHAN ALFORD ANDREWS, PETER GEORGE
MATTHEWS, and LIRA NIKOLOVSKA

Appeal 2009-005049
Application 09/868,375¹
Technology Center 2100

Decided: August 5, 2009

Before LANCE LEONARD BARRY, JEAN R. HOMERE, and STEPHEN
C. SIU, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

¹ Filed on June 18, 2001. This application claims priority to PCT/EP00/10284, filed on October 18, 2000, which claims foreign priority to 99203442.1, filed October 20, 1999. The real party in interest is Koninklijke Philips Electronics N.V.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 42 through 44, 47 through 52, 54 through 58, 60, 61, 65 through 68, and 71 through 74. Claims 1 through 34 and 70 have been cancelled. Claims 53, 59, and 69 are objected to as being dependent upon a rejected claim, but would be allowable if rewritten in independent form to recite the limitations of the base claim and any other intervening claims. Claims 35 through 41, 45, 46, and 62 through 64 have been allowed. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' Invention

Appellants invented an apparatus, method, and computer program product for allowing a user to selectably present information. (Spec. 1, ll. 3-4.) Appellants' Figure 1 depicts the upper side of a table that has a built-in information processing device including a touch screen (101). (Spec. 6, ll. 14-16.) The outermost area of the touch screen (101) comprises a flow zone (102) which presents information links (103). (Spec. 6, ll. 22-23.) A flow control area (104) is displayed between each pair of links (103) and enables a user to control the flow speed and flow direction by using a point-and-select means. (Spec. 2, ll. 16-19; Spec. 6, ll. 26-27.) The point-and-select means may include a computer mouse that confirms an operation by means of a button click. (Spec. 2, ll. 19-22.) If the user selects an information link (103), the link expands to a full presentation (108) located in the presentation zone

(106). (Spec. 7, ll. 8-10.) According to the Appellants, the claimed invention provides an easy-to-use and inviting user interface that adapts the flow speed to a user's personal preference. (Spec. 1, ll. 16-17; Spec. 2, ll. 11.)

Illustrative Claim

Independent claim 42 further illustrates the invention as follows:

42. An information processing device for exploring information by a user, comprising:

a display screen to display a plurality of flowing links within a flow zone, each of the flowing links being linked to respective information units for display as a presentation in a presentation zone of the display screen; and

a controller that is configured to selectively change flow speed and flow direction based on locations of user input events within the flow zone.

Prior Art Relied Upon

The Examiner relies on the following prior art as evidence of unpatentability:

Flutka	US 5,758,934	Jun. 2, 1998
Nawaz	US 5,959,621	Sep. 28, 1999
Ku	US 6,005,767	Dec. 21, 1999 (filed Nov. 14, 1997)
McNelley	US 6,243,130 B1	Jun. 5, 2001 (filed Mar. 5, 1999)
Yamada	US 6,259,432 B1	Jul. 10, 2001 (filed Jul. 20, 1998)

Glaser	US 6,392,671 B1	May 21, 2002 (filed Oct. 27, 1998)
Nevin	US 6,553,919 B1	Apr. 29, 2003 (filed Jul. 6, 1999)
Naidoo	US 6,629,136 B1	Sep. 30, 2003 (filed Nov. 15, 1999)
Barrus	US 6,693,652 B1	Feb. 17, 2004 (filed Sep. 26, 2000)
Bates	US 6,832,350 B1	Dec. 14, 2004 (filed Sep. 30, 1998)

Rejections on Appeal

The Examiner rejects the claims on appeal as follows:

Claims 66 through 68 and 72 stand rejected under 35 U.S.C. § 112, first paragraph for failing to comply with the written description requirement.

Claims 42 through 44, 47, 49, 50, 60, and 61 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Nawaz and Yamada.

Claim 48 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Nawaz, Yamada, and Barraus.

Claims 51 and 54 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Nawaz, Yamada, and Bates.

Claim 52 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Nawaz, Yamada, Bates, and Glaser.

Claim 55 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Nawaz, Yamada, and Flutka.

Claim 56 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Nawaz, Yamada, and Naidoo.

Claims 57 and 58 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Nawaz, Yamada, and Ku.

Claims 65, 67, 68, 71, and 72 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Nawaz, Yamada, Ku, and Nevin.

Claim 66 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Nawaz, Ku, Nevin, and McNelly.

Claim 73 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Nawaz, Yamada, and Nevin.

Claim 74 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Nawaz, Yamada, Nevin, and Ku.

Appellants' Contentions

1. Appellants contend that dependent claims 66 through 68 and 72 comply with the written description requirement. In particular, Appellants argue that a touch screen directly abutting a part of the table top, a touch screen extending to an outer part of the table top, a touch screen enclosed in the table top, and a touch screen disposed horizontally and enclosed within an outer part of the upper table side are described in Appellants' Specification in such a way as to reasonably convey to an ordinarily skilled artisan that the inventor had possession of the claimed invention. (App. Br. 14-15; Reply Br. 3-5.)

2. Appellants contend that the Examiner erred in concluding that the combination of Nawaz and Yamada renders independent claim 42 unpatentable. In particular, Appellants argue that Yamada's disclosure of clicking a scroll button and scrolling an active window regardless of the

location of the mouse cursor does not teach selectively changing flow speed and flow direction based on locations of user input events within the flow zone, as recited in independent claim 42. (App. Br. 7-9; Reply Br. 2-3.)

Examiner's Finding and Conclusions

1. The Examiner finds that dependent claims 66 through 68 and 72 do not comply with the written description requirement. In particular, the Examiner finds that Appellants' original disclosure does not provide a specific explanation of how the touch screen is built or positioned into the table. (Ans. 17-18.)

2. The Examiner concludes that the combination of Nawaz and Ramada renders independent claim 42 unpatentable. In particular, the Examiner finds that Yamada's disclosure of scrolling information within an application window using a mouse cursor that controls scrolling speed and direction teaches selectively changing flow speed and flow direction based on locations of user input events within the flow zone, as recited in independent claim 42. (Ans. 16-17.)

II. ISSUES

1. Have Appellants shown that the Examiner erred in finding that dependent claims 66 through 68 and 72 fail to comply with the written description requirement? In particular, the issue turns on whether Appellants' original disclosure supports a touch screen directly abutting a part of the table top, a touch screen extending to an outer part of a the table

top, a touch screen enclosed in the table top, and a touch screen disposed horizontally and enclosed within an outer part of the upper table side, as recited in dependent claims 66 through 68 and 72.

2. Have Appellants shown that the Examiner erred in concluding that the combination of Nawaz and Ramada renders independent claim 42 unpatentable? In particular, the issue turns on whether Yamada teaches selectively changing flow speed and flow direction based on locations of user input events within the flow zone, as recited in independent claim 42.

III. FINDINGS OF FACT

The following Findings of Fact (“FF”) are supported by a preponderance of the evidence.

Appellants’ Invention

1. Appellants’ information processing device could be built into a table for use in a public place such as a café, in which case the flow zone may run along all borders of the display screen so as to allow people to recognize the information links from multiple directions. (Spec. 2, ll. 4-7.) As depicted in Figure 1, the borders of the touch screen (101) follow the edge of the table top (100). (Spec. 6, l. 17.)

Nawaz

2. Nawaz discloses a system and method for dynamically displaying data items on a client computer. (Abstract.) Figure 3 depicts a graphical user interface environment (100). (Col. 7, ll. 29-30.) The graphical user interface is displayed on a computer display and includes a

windowing environment for displaying windows (102) and a desktop (104). (Col. 7, ll. 30-33.) The desktop (104) includes a viewer (140) which is a hypertext viewer used to display hypertext data, such as hypertext markup language (“HTML”) data. (Col. 8, ll. 14-16.) The viewer (140) views a ticker HTML document for displaying a ticker display pane (142) and a source identifier. (Col. 8, ll. 16-18.) In the ticker display pane (142), the data items are scrolling from right to left across the ticker display pane. (Col. 8, ll. 34-35.) The ticker display pane displays sports scores with data item (156) moving onto and data item (150) moving off of the ticker display pane. (Col. 8, ll. 42-44.) The data items scroll across the display at a default speed, but the user may select variable speeds through a control menu. (Col. 8, ll. 44-46.)

Yamada

3. Figure 7 depicts a mouse cursor (300) displayed in a frame window (302). (Col. 18, ll. 48-49.) The displayed mouse cursor (300) indicates that the fast downward scrolling of data is occurring in the frame window (302). (Col. 18, ll. 49-51.)

4. As depicted in Figure 5, altering a mouse cursor involves the use of a quantity of speed indicators in the direction of scrolling, the quantity being based on the speed of the scrolling desired by a user as detected by the mouse (200). (Col. 18, ll. 20-23.) Figure 6(c) depicts a number of speed indicators arranged in a scrolling direction that are equivalent to the overall instructed scrolling intervals. (Col. 18, ll. 24-26.) For convenience sake, the mouse cursor arrangement for all four directions and three different speeds (or speed changes) are depicted in Figure 6(c). (Col. 18, ll. 36-39.) Only the

speed indicator corresponding to the current scrolling direction (and in a quantity corresponding to the scrolling speed) will actually appear on the desktop. (Col. 18, ll. 39-41.)

IV. PRINCIPLES OF LAW

Written Description

The Court of Appeals for the Federal Circuit has held that “[t]o fulfill the written description requirement [under 35 U.S.C. § 112], the patent specification must describe an invention in sufficient detail that one skilled in the art can clearly conclude that the inventor invented what is claimed.” *Kao Corp. v. Unilever U.S., Inc.*, 441 F.3d 963, 967-968 (Fed. Cir. 2006) (quoting *Cordis Corp. v. Medtronic AVE, Inc.*, 339 F.3d 1352, 1364 (Fed. Cir. 2003)). Put another way, “the applicant must ... convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention.” *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991) (emphasis in original). “The written description, although it need not include information that is already known and available to the experienced public, must be in sufficient detail to satisfy the statutory requirements, employing ‘[w]ords, structures, figures, diagrams, formulas, etc., that fully set forth the claimed invention.’” *Space Systems/Loral, Inc. v. Lockheed Martin Corp.*, 405 F.3d 985, 987 (Fed. Cir. 2005) (quoting *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997)).

Obviousness

“On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.” *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998).

Section 103 forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007).

In *KSR*, the Supreme Court emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," and discussed circumstances in which a patent might be determined to be obvious. *Id.* at 415 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)). The Court reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 416. The operative question in this "functional approach" is thus "whether the improvement is more than the predictable use of prior art elements according to their established functions." *Id.* at 417.

In identifying a reason that would have prompted a person of ordinary skill in the relevant field to combine the prior art teachings, the Examiner must show some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR*, 550 U.S. at 418 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

V. ANALYSIS

35 U.S.C. § 112, first paragraph

As set forth in the Findings of Fact, Appellants' Specification indicates that the information processing device can be built into a table, and the flow zone may run along all borders of the display screen so as to allow people to recognize the information links from multiple directions. (FF 1.) Further, Appellants' Figure 1 depicts that the borders of the touch screen (101) follow the edge of the table top (100). (*Id.*) An ordinarily skilled artisan would immediately discern from the cited portions of the original disclosure that the touch screen directly abuts a part of the table top. We find the Examiner's alternative interpretation of the claim language to be an improper basis for establishing that Appellants did not possess the claimed invention at the time of filing. (Ans. 17-18.) We are satisfied that Appellants' original disclosure supports that the touch screen directly abuts a part of the table top. We therefore agree with Appellants that an ordinarily skilled artisan would be able to discern from the original disclosure that Appellants had possession of the inventive concept of a touch screen directly abutting a part of the table top, a touch screen extending to an outer part of the table top, a touch screen enclosed in the table top, and a touch screen disposed horizontally and enclosed within an outer part of the upper table side. (App. Br. 14-15; Reply Br. 3-5.) It follows that Appellants have shown that the Examiner erred in finding that the claimed invention does not comply with the written description requirement. Therefore, we will not sustain the Examiner's rejection of claims 66 through 68 and 72.

35 U.S.C. § 103

Independent claim 42 recites, in relevant part, selectively changing flow speed and flow direction based on locations of user input events within the flow zone.

As set forth in the Findings of Fact section above, Nawaz discloses dynamically displaying data items on a client computer. (FF 2.) In particular, Nawaz discloses a graphical user interface (100) that includes data items (150 and 156) moving on and off the ticker display pane (142). (*Id.*) The data items scroll across the ticker display pane (142) at a default speed, but the user may select variable speeds through a control menu. (*Id.*) We find that Nawaz's disclosure teaches a graphical user interface that displays data items scrolling across a display pane at variable speeds. In particular, we find that Nawaz's disclosure of a scrolling display pane teaches a flow zone, as recited in independent claim 42.

Further, Yamada discloses utilizing a mouse cursor (300) to scroll a window interface. (FF 3.) In particular, Yamada discloses that the mouse cursor utilizes a number of indicators that control scrolling. (FF 4.) Each indicator is based on the direction and speed of the scrolling desired by a user. (*Id.*) We find that Yamada's disclosure teaches a mouse cursor that allows a user to control scrolling within a user interface by placing the cursor anywhere on the interface to thereby activate scrolling direction and speed. In summary, we find that Yamada's disclosure of a mouse cursor within a user interface that controls the scrolling speed and scrolling direction desired by a user, in conjunction with Nawaz's disclosure of a scrolling display pane, amounts to selectively changing flow speed and flow direction based on locations of user input events within the flow zone. We

find nothing in Appellants' claim language that precludes users' of Yamada's system from placing the mouse anywhere on the user interface, including a scrolling display pane or flow control zone, to thereby selectively change the flow speed and flow direction. Therefore, we are not persuaded by Appellants' argument that the mouse disclosed in Yamada controls scrolling independent of the location of the mouse cursor. (App. Br. 7-9; Reply Br. 2-3.) It follows that Appellants have not shown that the Examiner erred in concluding that the combination of Nawaz and Ramada renders independent claim 42 unpatentable.

Appellants did not provide separate arguments with respect to the rejection of claims 43, 44, 47 through 52, 54 through 58, 60, 61, 65 through 68, and 71 through 74. Therefore, we select independent claim 42 as being representative of the cited claims. Consequently, claims 43, 44, 47 through 52, 54 through 58, 60, 61, 65 through 68, and 71 through 74 stand or fall with representative claim 42. *See* 37 C.F.R. § 41.37 (c)(1)(viii).

VI. CONCLUSIONS OF LAW

1. Appellants have shown that the Examiner erred in concluding that claims 66 through 68 and 72 fail to comply with the written description requirement under 35 U.S.C. § 112, first paragraph.

2. Appellants have not shown that the Examiner erred in concluding that claims 42 through 44, 47 through 52, 54 through 58, 60, 61, 65 through 68, and 71 through 74 are unpatentable under 35 U.S.C. § 103(a).

VII. DECISION

We reverse the Examiner's decision rejecting claims 66 through 68 and 72 under 35 U.S.C. § 112, first paragraph. However, we affirm the Examiner's decision rejecting claims 42 through 44, 47 through 52, 54 through 58, 60, 61, 65 through 68, and 71 through 74 under 35 U.S.C. § 103(a).

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner's decision is affirmed. *See* 37 C.F.R. § 41.50(a)(1).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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